
(2015) 10 CAL CK 0015

In the Calcutta High Court

Case No : CAN No. 2250 of 2015 and AST No. 27 of 2015

Astami Biswas (Dey)

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 12, 16, 4

Citation : (2015) 10 CAL CK 0015

Hon'ble Judges : G.C. Gupta and Shib Sadhan Sadhu, JJ.

Bench : Division Bench

Advocate : Saptangshu Basu and Bhagbat Chaudhuri, Advocates, for the Appellant; Biswajit De and Tapati Samanta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Gupta, J.—The subject matter of challenge in the appeal is a judgement and order dated 25th February, 2015 passed by the learned Trial Court dismissing the writ petition without any order as to costs.

2. The facts and circumstances of the case briefly stated are as follows:-

The writ petitioner was elected as the Prodhan of Rampur - I Gram Panchayat, Jorari, Coochbehar on 16th August, 2013. On 5th September 2014, the respondents No. 7 to 16 requested the prescribed authority to convene a meeting for removal of the Prodhan, in pursuance whereof, the prescribed authority convened a meeting, to be held on 19th September, 2014 at 12 noon, by a notice dated 9th September, 2014 for consideration of the motion for removal of/lack of confidence against the Prodhan and for taking decision on it.

3. The notice dated 9th September, 2014 convening a meeting was challenged in W.P. No. 26758 (W) of 2014 on the ground that the notice was ambiguous, because the expression removal/lack of confidence had both been used. It was alleged that there was no specific agenda.

4. Mr. Basu, contended that the intention of the law is that there has to be first a no confidence motion passed against the Prodhan and then the question of a motion for removal of the Prodhan might arise. He in support of his submission relied upon a judgement in the case of In Re: Mihir Mondal and Others, , wherein the following views were taken:-

"Apart from the above, I am of the view that Ss. 12 and 16 of the West Bengal Panchayat Act, 1973, do not contemplate removal of the Prodhan and the Upa-Prodhan in one meeting and two separate meetings are required to be held for the said purpose upon two separate notices having been given in support thereof."

5. He also relied upon a judgement in the case of Kitabuddin Seikh Vs. Daud Hossain and Others--> wherein the following views were taken:-

"It, therefore, appears that a Prodhan or an Upa-Prodhan may be removed from office by a resolution carried by majority of the existing members of the Gram Panchayat. The notice of such meeting shall be given to the prescribed authority. It, therefore, appears that there should be a resolution for removal of a Prodhan or an Upa-Prodhan of a Gram Panchayat. A resolution of no confidence cannot equate to resolution of removal."

6. Mr. Basu added that a motion for no confidence and a motion for removal are conceptually different, which was also recognized by a Division Bench of this Court in an unreported judgement dated 19th November, 2014 in MAT No. 1983 of 2014 wherein the Hon"ble Chief Justice speaking for the Bench held as follows:-

"The writ petitioner contended before the learned Judge that a motion dated September 15, 2014 for expressing "no confidence" on the petitioner was initiated by the respondent Nos. 6 to 15 out of total 15 members of the above Gram Panchayat. According to him, the impugned notice dated September 19, 2014 could not be sustained in law as the same was issued for removal of the petitioner from the office under reference instead of a notice for expressing "no confidence" on him.

The learned Judge accepted the contention of the writ petitioner and quashed the notice dated September 19, 2014. However, His Lordship made it clear that the point of law as discussed has only been decided in the writ application without interfering with the merits of other allegations raised in the writ application and this matter will not prevent the parties to proceed afresh in the matter in accordance with law.

Being aggrieved, some of the respondents have come up in appeal before us. It is contended on behalf of the appellants by reference to Section 12 of the West Bengal Panchayat Act, 1973 that "no confidence" and "removal" essentially mean the same thing and the notice ought not to have been quashed for such minor discrepancy.

According to us, even this minor discrepancy would indicate non-application of mind on the part of the appellants. In any event, the appellants are not precluded from proceeding afresh if the bar under sub-Section 11 of Section 12 of the said Act is not attracted.

We do not find any good reason to interfere with the judgement impugned before us."

7. Mr. Basu concluded by submitting that the notice should disclose clearly the business to be transacted at a meeting. He in support of his submission relied on a judgement in the case of Sri Dabir Mondal Vs. State of West Bengal and Others, . He relied on paragraph 11 of the judgement.

8. There can be no quarrel with the proposition that the business to be transacted should be clearly indicated in the notice convening the meeting. The judgement in the case of Sri Dabir Mondal is, however of no assistance because in that case nothing was decided and the matter was referred to a Larger Bench.

9. On behalf of the respondents, it was submitted that the Prodhan had duly been removed by the majority at a meeting duly convened and held on 19th September, 2014. Out of 15 members 11 had voted in favour of removal of the Prodhan. Reliance was placed on the judgement in the case of Resida Khatoon & Ors. -Vs- BDO & Ors., reported in 2000 (1) CLJ 293, wherein the following views were taken:-

"The net effect therefore is that this mandatory requirement of law shall be met if a notice stating the object of proposed removal of the Prodhan or Upa-Prodhan is issued given by the requisitionists in accordance with the manner prescribed in Section 12 read with Section 16 of the Act. The requirement of the law shall be clearly met if the removal of the Prodhan or Upa-Prodhan is mentioned as an agenda item for consideration and adoption of that meeting. If such a notice stating, over and above the removal as an agenda item, also mentions the fact the requisitionists have lost the confidence in the Prodhan or Upa-Prodhan, therefore, they are seeking his removal from the office and for the said purpose of removal, a meeting is being called, the notice cannot be termed as defective or in violation of the requirement of law as contemplated in Section 12 read with Section 16 of the Act. In fact, if at all, the reasons for removal either being "lack of confidence", or "no confidence", or any other factor, would make the notice more comprehensive. By stating this, the members of the Gram Panchayat as well as the office holder sought to be removed shall be informed the reasons for removal so that when the meeting is actually convened, the members have a clear prior notice that they shall discuss the resolution in the light of the facts being mentioned as grounds for such removal as are occurring in the notice. We must hasten to add that we should not be construed as having held that such mentioning of such a ground is a mandatory requirement. We are only saying that if a ground of "lack of confidence" or "no confidence" happens to be mentioned in the notice, over and above the fact of removal and the purpose for

which the meeting is being called is the "removal", the notice is not vitiated. The view taken by the learned Single Judge in the case of Rati Kanta Giri (supra), therefore, does not commend to us to be a good proposition of law and we, accordingly, overrule the same."

10. The respondents also relied upon a judgement of this Court in the case of Amulya Mondal -Vs- State of West Bengal & Ors., wherein a learned Single Judge of this Court held as follows:-

"The question is, whether the motion of no confidence and the motion of removal are two different things, or they are synonymous with each other. When a motion for no confidence is moved and if it is carried out, the effect is the same. In matters of elected offices certain procedure is laid down for removal of such elected persons. The only way to remove a Prodhan or a Upa-Prodhan is by way of a Motion of No Confidence against such incumbent. When the agenda is for the removal of Prodhan, the Prodhan can only be removed when the House passes a Resolution by a majority of no confidence in the Prodhan. If the Resolution is of no confidence against the Prodhan and if it is passed, the result will be removal of Prodhan. Therefore, the word "removal" or "lack of confidence" are, synonymous with each other in the present context. The view taken by the learned Single Judge in Menoka Halder's Case (Supra) does not appear to be laying down the correct law on this subject. A Division Bench of this Court in F.M.A.T. No. 214/95 has taken the same view and observed: "In our view the notice of removal and no-confidence is the same."

11. Reliance was also placed on a judgement in the case of Shri Abdul Wadud Vs. The Block Development Officer and Others, , wherein the following views were taken:-

"In fact, in an identical set of facts, the Division Bench of this Court in FMAT No. 2141 of 1995 held that "the notice of removal" and the notice of "No Confidence" is same. It was further held therein that the Court should not interfere with the functioning of a democratic body on some technical plea of pretext. The Division bench further held that the expression "removal" of the Prodhan as envisaged in the Panchayat Act is the same as "No Confidence" and everybody understands that when a Prodhan loses confidence of the majority of the members, question of his removal arises. It was further held therein that on the basis of such request made by the requisitionists, the Prodhan should have called a meeting for transacting the business on the agenda of removal of Prodhan."

12. The controversy arises out of the notice dated 9th September, 2014 issued by the prescribed authority, convening a meeting to be held on 19th September, 2014 at 12 noon, the agenda whereof reads as follows:-

"for consideration of the motion for removal of/lack of confidence against Prodhan and for taking decision on it."

13. The judgements relied upon both by the appellant and the respondents were

rendered before the amendment, introduced to Section 12 of the West Bengal Panchayat Act, in the year 2010. The amended provision contained in Sub-Section 1 of Section 12 reads as follows:-

"Subject to other provisions of this section, the Prodhan or the Upa- Prodhan of a Gram Panchayat may, at any time, be removed from his office by the majority of the existing members of the Gram Panchayat, referred to in Clause (i) of sub-section (2A) of Section 4 , expressing their lack of confidence against the Prodhan or the Upa-Prodhan or recording their decision to remove the Prodhan or the Upa-Prodhan, at a meeting specially convened for the purpose."

14. The aforesaid provision may be compared with the pre-amendment provision which reads as follows:-

"12. Removal of Prodhan and Upa-Prodhan. - (1) Subject to the other provisions of this section, a Prodhan or an Upa-Prodhan of a Gram Panchayat may, at any time, be removed from office by a resolution carried by the majority of the existing members referred to in clause (i) of sub-section (2A) of section 4 at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority:"

15. The pre-amended law provided simplicitor for a resolution by the majority removing the Prodhan, whereas the post-amendment provision provides for removal of the Prodhan by the majority either by recording their lack of confidence or by recording their decision to remove the Pradhan. Prior to the amendment there might have been some scope to raise the contention as to whether lack of confidence was the premise and removal was the conclusion whereby there might be a contention that two separate motions were required, but the scope for any such controversy has been eliminated by the amendment introduced in 2010 with effect from 1st July, 2010. Under the law, subsequent to 1st July, 2010, a Prodhan can be removed by expressing lack of confidence against him.

16. A Prodhan can also be removed for any reason other than lack of confidence. Therefore, the judgements cited by Mr. Basu do not really help him. The notice issued by the prescribed authority contained the agenda "for consideration of the motion for removal of/lack of confidence against the Prodhan and for taking decision on it."

17. Even assuming that Mr. Basu is right that lack of confidence and removal are not synonymous nothing really turns on that. The notice by no means is ambiguous because it has conveyed to the members of the concerned Gram Panchayat that the meeting is for consideration of removal of the Prodhan.

18. It may be contended that it was also a notice for consideration of lack of confidence against the Prodhan. Lack of confidence shall also result in removal of the Prodhan. The motion was admittedly carried by 11 out of 15 members. Resultant effect was that the Prodhan stood removed.

19. We are, as such, of the opinion that the controversy is altogether without any merit.

20. In the result the appeal stands dismissed without any order as to costs.

21. Urgent certified photocopy of this judgment, be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

Shib Sadhan Sadhu, J.

I agree.